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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,702	07/31/2001	Nissim Benvenisty	1822/113	3581
2101	7590	12/30/2003	EXAMINER	
BROMBERG & SUNSTEIN LLP			CROUCH, DEBORAH	
125 SUMMER STREET			ART UNIT	
BOSTON, MA 02110-1618			PAPER NUMBER	
			1632	

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SM.

**Advisory Action**

Application No.

09/918,702

Applicant(s)

BENVENISTY, NISSIM

Examiner

Deborah Crouch, Ph.D.

Art Unit

1632

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 8-17.

Claim(s) withdrawn from consideration: 1-7 and 18-47.

8. ☒ The drawing correction filed on 17 November 2003 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

  
Deborah Crouch, Ph.D.  
Primary Examiner  
Art Unit: 1632

Continuation of 5. does NOT place the application in condition for allowance because: The statements by Reubinoﬀ that high density cell cultures of human ES cells did not exhibit a pattern of structural organization suggestive of EB formation similar to those of mice or marmoset ES cell cultures are not persuasive. Reubinoﬀ does not suggest that these morphological differences would affect response to exogenous factors. Also, Reubinoﬀ states the human ES cells, express Oct-4, develop in to the three germ layers. Further, Reubinoﬀ states that hanging drop culture resulted in death of human ES cells. However, Keller suggests methods of culture other than the hanging drop method. Some experimentation is permitted in an obviousness rejection. Thompson shows the formation of three germ layers when injected into mice. Thompson is not relied upon for embryoid body formation but for human ES cells forming three germ layers. The arguments are not clear, but if applicant is arguing unexpected results, the claims are not commensurate in scope with the disclosed methods..

Continuation of 10. Other: As of January 13, 2004, the examiner's phone no. will be 571-272-0727. The phone no. of Deborah Reynolds, SPE, will be 571-272--734..